BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

VINCENT J. FURRIEL
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-412
Case No. 79-6640

S.S.A. No.

RIO HONDO COMMUNITY COLLEGE
(Employer)
C/o Reed Roberts Associates, Inc.

Employer Account No.
Office of Appeals No. ONT-4P-2124

The claimant appealed from the decision of the administrative law judge which held that the claimant was ineligible for benefits under section 1253.3 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant is an assistant professor at a community college. He was initially hired in January 1978. On or about June 30, 1978 he entered into a contract with the community college district to render services during the 1978-1979 school year on an 11.5-month basis. This contract ended on June 30, 1979.

By letter dated May 1, 1979 the claimant was informed by the employer that due to budgetary restrictions he would be changed from an 11.5-month employee to a 10-month employee for the 1979-1980 school year. The claimant was scheduled to, and did, return to work in September 1979. The claimant did not work between June 30, 1979 and the date he returned to work in September 1979.

According to the claimant, the 11.5-month contract did not provide for a recess period but required that services be performed in each month of the calendar year.

Prior to his receipt of the letter dated May 1, 1979, he had been informed by the chairperson of the board of trustees of the community college district that his contract for the 1979-1980 school year would probably remain the same. The claimant thus had expected to be working during the summer of 1979 as he had during 1978.

The claimant filed a claim for benefits effective July 1, 1979. The Department issued a determination holding that the claimant had been laid off for lack of work. The employer appealed to an administrative law judge, who held that since the claimant had reasonable assurance of returning to work in the 1979-1980 school year, he was ineligible for benefits under section 1253.3 of the code.

REASONS FOR DECISION

Section 1253.3 of the Unemployment Insurance Code provides in part as follows:

> "(a) Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable on the basis of service to which Section 3309(a)(1) of the Internal Revenue Code of 1954 applies, in the same amount, on the same terms, and subject to the same conditions as such benefits payable on the basis of other service subject to this division, except as provided by this section.
>
> "(b) Benefits specified by subdivision (a) of this section based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution shall not be payable to any individual with respect to any week which begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that

> such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms."

Section 1253.3(b) was patterned after section 3304(a)(6)(A) clause (i) of the Federal Unemployment Tax Act, as enacted by Public Law 94-566, which provides in part as follows:

> "(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, ..."

Review of the congressional debates on Public Law 94-566 and earlier legislation satisfies us that the intent of Congress in enacting such legislation was to deny benefits to those school employees who are normally off work during summer recess or summer vacation periods. However, it was not the intent of Congress to deny benefits to year-round employees or those regularly scheduled for summer work who, due to the cancellation of normal or scheduled summer work, became unemployed. (Congressional Record, September 29, 1976, Vol. 149, Part II, H11615-6.) (See also Congressional Records, September 29, 1976, Vol. 122, No. 149, S17013-4; September 29, 1976, Vol. 122, No. 149, S17022-3; October 1, 1976, Vol. 151, Part II, H12172.)

In this respect, the intent of Congress has been followed and applied in numerous cases arising out of cancellation of 1978 summer sessions following passage of Proposition 13 and the concomitant reduction of funds available to school districts. During the summer of 1978, the Employment Development Department and the United States Department of Labor reevaluated the applicability of

section 1253.3 to professional and nonprofessional school employees who were scheduled to teach or work during the 1978 summer school session. It was concluded, after an analysis of the Congressional Record, that it was not the intent of Congress to deny benefits to those scheduled for summer work who became unemployed due to cancellation of the summer session.

We believe that similar reasoning must be followed in the instant case. The claimant was essentially a full-time employee who was reduced to a 10-month employee. Prior to this action by the employer the claimant had been informed that his 11.5-month contract would probably be renewed on the same terms. Thus, he could reasonably anticipate that he would continue his usual pattern of summer work. When he was reduced to a 10-month employee he was in effect laid off from his normal summer work and suffered a wage loss. It is clear that the cause of his unemployment was not a normal summer recess or vacation period but the loss of customary summer work. To equate this claimant with those who normally do not work during summer recess periods would contravene the policy set forth in section 100 of the Unemployment Insurance Code that benefits are to be provided to those unemployed through no fault of their own.

We therefore conclude that the claimant is not ineligible under section 1253.3 of the Unemployment Insurance Code beginning July 1, 1979.

DECISION

The decision of the administrative law judge is reversed. The claimant is not ineligible under section 1253.3 of the code beginning July 1, 1979. Benefits are payable if he is otherwise eligible.

Sacramento, California, May 6, 1980.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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